# In the Supreme Court of the United States

**OCTOBER TERM, 1956**

**No. 778**

WOOSTER DIVISION OF BORG-WARNER CORPORATION,

*Cross-Petitioner,*

v.

NATIONAL LABOR RELATIONS BOARD.

## CROSS-PETITION FOR A WRIT OF CERTIORARI

**To the United States Court of Appeals**
**For the Sixth Circuit.**

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The Wooster Division of Borg-Warner Corporation (hereinafter called the Company) prays that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit, issued September 12, 1956, ordering enforcement against the Company of a part of an order issued by the National Labor Relations Board (hereinafter called the Board), the writ to issue only in the event this Court should grant the Petition for Writ of Certiorari in No. 622 at this Term.

This cross-petition is filed because the Solicitor General, on behalf of the Board, has filed a petition for a writ of certiorari (No. 622, October Term, 1956) to review that part of the decision of the Court below which denied enforcement, in part, of the order issued by the Board. Unless this cross-petition were filed, only a portion of the case presented to the Court below would be tendered to this Court for review.

While the issues are by no means moot, the Company, in view of the collective bargaining which has taken place

since the case was argued below, would not have sought review of the decision of the Court below had the Board's petition not been filed. Moreover, the Company believes, for the reasons set forth in its Brief in Opposition filed concurrently herewith (No. 622), that the Board's petition should be denied.

The Company believes strongly, however, that the question presented by that portion of the decision below which granted partial enforcement of the Board's order is at least as important in the administration of the National Labor Relations Act, as amended (herein called the Act) as the question tendered by the Board's petition (No. 622). Therefore, if this Court determines to review that part of the decision below which denied enforcement of the Board's order, it should review also that part which granted enforcement of the order.

## OPINIONS BELOW.

The Opinion of the Court below (Appendix, *infra*, pp. 22-36) is reported at 236 F. 2d 898. The findings of fact, conclusions of law, and order of the Board (R. 385a-506a)[1] are reported at 113 N. L. R. B. 1288.

## JURISDICTION.

The judgment of the Court below (Appendix, *infra*, pp. 36-37) was entered on September 12, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 and under Section 10 (e) of the National Labor Relations Act, as amended, 61 Stat. 147, 29 U. S. C. 150 (e).

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[1] "R" references are to Joint Appendix filed in the Court below, to which have been added the proceedings in that Court, and all of which have been filed in this Court in support of the Petition for a Writ of Certiorari in No. 622 at this Term.

## QUESTIONS PRESENTED.

The two questions presented both arose in the course of bargaining negotiations between the Company and the Union which was identified in the Board's certification as "International Union, United Automobile, etc., Workers of America (C. I. O.)." The election and certification both occurred before the Union had chartered a Local to represent the Company's employees. The Union, however, chartered its Local No. 1239 before bargaining began.

The Union's proposals which opened the bargaining negotiations immediately raised the question of how the Union should be identified in the preamble to the labor contract. These proposals were denominated as "*Proposal of Local 1239*, U. A. W.-C. I. O.", and departed from the Board's description of the Union in the certification by demanding that the Union be identified in the preamble as "International Union, United Automobile, etc. Workers, *and its Local Union No. 1239*."

The Company's first counter-proposal sought, in describing the Union in the preamble, to place greater emphasis on the Union's local. Ultimately, after successive Union proposals and Company counter-proposals, the negotiators for *both* parties treated the description of the Union party to the agreement as a question simply of emphasis, the Company proposing to describe the Union as "Local Union No. 1239, United Automobile etc. Workers" and the Union proposing to describe itself as "United Automobile etc. Workers, Local Union No. 1239."

The decision of the Court below was that (i) the name by which the Union was to be identified in the preamble to the labor contract was, as a matter of law, outside the bargaining area of "wages, hours and other terms and conditions of employment, or the negotiation of an agreement," (ii) despite the Company's conceded good faith, the

fact that it seriously urged *Union acceptance* of a description of the Union other than the description in the Board's certification constituted *per se*, or as a matter of law, a refusal to recognize the Union, (iii) that therefore the Company was guilty of a refusal to bargain as a matter of law.

The first question presented, therefore, is whether, under circumstances where an employer concededly is bargaining in good faith, in fact, and in fact fully recognizes the Union and its representative status, the employer is guilty of a refusal to bargain as a matter of law, because it sought, over Union objection, the *Union's agreement* to identify itself with a name other than that prescribed in the Board's certification.

The second question is whether substantial evidence on the record considered as a whole supports the findings and the conclusion of the Board that the Company violated Section 8(a)(1) of the Act in inviting striking employees to return to work, in making a bus available to employees who wished to enter the plant in the face of illegal mass picketing, and because on one occasion a supervisor suggested to a Union representative that a meeting between local Union and local Company representatives might be helpful in resolving the strike. The Court below affirmed the finding of the Board that on these counts the Company was guilty of interference in violation of Section 8(a)(1) of the Act, and ordered enforcement of the Board's order which required the Company to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights under the Act.

## STATUTE INVOLVED.

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C. 151, *et seq.*), are as follows:

*Unfair Labor Practices*

Sec. 8. (a) It shall be an unfair labor practice for an employer * * *

* * * * *

(5) to refuse to bargain collectively with the representative of his employees, subject to the provisions of section 9 (a).

* * * * *

(b) It shall be an unfair labor practice for a labor organization or its agents * * *

* * * * *

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

* * * * *

(d) For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times, and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession:

* * * * *

*Representatives And Elections*

Sec. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment:

* * * * *

## STATEMENT OF THE CASE.

### 1. Bargaining Background of the Parties and the Proposals in Question.

The Company is an unincorporated but independent division of Borg-Warner Corporation, operating a plant in Wooster, Ohio, a small town with a population of approximately 15,000 people in a rural area (R. 168a, 239a). Another independent division of Borg-Warner Corporation, the Pesco Products Division, operates a plant in Cleveland, Ohio, in a large industrial area (R. 184a, 239a). The Company and Pesco make similar products (R. 185a).

The Union, having had labor contracts covering employees of the Pesco Division since 1944, commenced an organization campaign at the Company's plant in the Fall of 1952, in which the Union's local Pesco representatives took an active part (R. 239a, Resp. Ex. 2 and 13, R. 112a, 123a). After a representation election held before the Union chartered its local (R. 239a), the Union was certified as the bargaining representative, the Board's certification identifying the Union simply as "International Union, United Automobile, etc., Workers of America, C. I. O." (G. C. Ex. 3-a-b-c, R. 25a-34a). Shortly thereafter, and before it opened the bargaining, the Union chartered its Local No. 1239 (R. 239a, 240a).

The first Union proposals to the Company were delivered *by the Union's Local president*, and were denominated as *"Proposal of Local 1239*, U. A. W.-C. I. O., to Wooster Division of Borg-Warner Corporation" (R. 154a, 240a; G. C. Ex. 4, p. 8 and Schedule). Throughout the bargaining which followed, the Union sought to compel the Company's acceptance at Wooster of the provisions of the Pesco contract. (See, e.g., R. 240a-241a; G. C. Ex. 9, 63; Resp. Ex. 2).

In its original proposal, the Union sought to contract as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America *and its Local Union No. 1239*," an obvious departure from the description of the Union in the Board's certification. Throughout the bargaining and the Union's later proposals, it *never* omitted the "Local Union No. 1239" from its proposals for a preamble (G. C. Ex. 4, 9; R. 350a-351a, 357a-358a).

The Company offered successive counter-proposals, seeking *Union agreement* "that the primary emphasis ought to be put on the Local representatives of the Union" in view of the fact "that the problems arose here [in Wooster]; that the people who were involved in those problems lived and worked here; that this was where any problems which arose ought to be settled [and] that the people down here were responsible people with whom it was most likely that we would deal" (R. 315a). Ultimately, although they remained in sharp dispute about many cost and some non-cost items, the Union and the Company both treated their respective proposals and counter-proposals for the description of the Union in the preamble as a question merely of emphasis: the Company proposing "Local Union No. 1239, United Automobile, etc., Workers of America," and the Union proposing "United Automobile, etc. Workers of America, Local Union No. 1239" (R. 350a, 351a).

In the long history of bargaining between the same Union and the Borg-Warner Corporation at its Pesco Division, the principal representatives of both Union and employer were the same men who represented the Union and the Company respectively in the bargaining here involved (R. 239a, 228a). In the Pesco bargaining, despite

the fact that the Board's certification described only the Local Union, the Union had insisted that it be described in the contract by both its International and Local names, and had carried its insistence to the point of strike in order to compel acquiescence on the part of the employer (R. 247a, 313a, 521a).

The Union had a long established practice of bargaining with other employers, as well, with respect to the way in which it should be identified in its collective bargaining contracts. In some instances this identification was in its international name, in others only in the name of its applicable local, and in still others in both (R. 377a, 383a).

**2. It is Conceded That in the Advancement of its Counter-Proposals and in All Other Respects the Company Acted in Good Faith in Fact Throughout the Period of Bargaining Involved.**

Both in the hearing before the Trial Examiner and in oral argument before the full Board, the general counsel freely conceded that at all times during the bargaining the Company had acted in good faith in fact, and no claim to the contrary was ever asserted. This was recognized by the Trial Examiner (R. 389a), both the majority (R. 478a) and the minority (R. 490a) of the Board, and the Court of Appeals (Appendix, *infra*, pp. 25-26, 28-29).

The majority of the Board determined that the Company's liability "turns not upon its good faith but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining" (R. 478a); or, as paraphrased by the Court of Appeals, "the Company's insistence upon them to the point of impasse, *even though in good faith*, made the action *illegal per se*" (Appendix, *infra*, p. 26, emphasis supplied).

### 3. Throughout the Bargaining Involved the Company at all Times Recognized, and Met and Conferred With the Union as the Exclusive Bargaining Representative of the Company's Employees.

There is no claim that the Company at any time failed, *in fact*, to comply with the requirements of Section 8(d) of the Act "to meet at reasonable times and confer in good faith" with the Union "with respect to wages, hours and other terms and conditions of employment." Nor is there any claim that, *in fact*, the Company failed at any time to recognize the Union for such purposes as "the exclusive representatives of all the employees" as required by Section 9(a) of the Act.

In the bargaining, the Company recognized, met and conferred with the Union's Local representatives and officers, its International representatives, one of its Regional Directors, an Administrative Assistant, its Publicity Director, and an official of its Borg-Warner Council (R. 152a, 153a). The facts fully support the finding of the Court of Appeals that "there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees. The bargaining was done with it, not with the employees. Any requirement * * * would be the result of *an agreement with the Union* to that effect." (Appendix, *infra*, p. 28, emphasis supplied.)

**4. The Trial Examiner, the General Counsel, the Board Majority and Minority, and the Court of Appeals, all Recognized that the Company's Counter-proposal Was Legal to Make, Legal to Accept, and Legal to Include in a Collectively Bargained Labor Contract.**

The trial examiner specifically held "that submission of the Company's proposals did not violate the Act" (R. 431a), and that they could be "adopted if assented to" (R. 430a). The general counsel stated that he did "not contend that those propositions were matters that could not be proposed by the Company or that they were matters that the Union could not agree" to (p. 18, Report of oral argument before the Board). The majority of the Board recognized "that the respondent could make these proposals"; that they were "not in conflict with the provisions of the Act," and that the Union was entirely free to agree to the proposals (R. 479a). The Court of Appeals recognized the validity of this proposition in holding "that the designated bargaining agent is the party with whom the contract is to be made *unless it voluntarily relinquishes such right*" (Appendix, *infra*, p. 30, emphasis supplied).

**5. At the Direction of the Union's International Executive Board, a Labor Contract With the Company was Ultimately Agreed to and Signed on Behalf of the Union.**

The ultimate execution of a collective bargaining agreement not only was consented to but was originally conceived and specifically directed by the International. This contract contained the last of the Company's several counter-proposals for description of the Union in the preamble.

Four or five of the Union's International representatives summoned local representatives and directed them "to recommend to the membership * * * that we end the

strike and go back to work" (R. 364a). The Union's Local president opposed this action (R. 364a), and the Union's Local representatives "didn't have any intention of going in and talking to the Company until the International called us * * * and asked us to talk the membership into going back to work" (R. 365a). Before the contract was signed it was approved by the Executive Board of the International Union in Detroit (R. 362a, 363a, 375a).

**6. The Alleged Acts of Interference.**

In the course of a strike which occurred during the bargaining, the Union, until it was enjoined by a local state court, engaged in illegal mass picketing to prevent the Company's employees who desired to do so from entering the plant (G. C. Ex. 14; Resp. Ex. 20-A). In the face of this illegal picketing, the Company simply made available without charge a bus in which employees who wished to do so could pass without molestation through the plant gates. (See G. C. Ex. 32.) During the strike, by newspaper advertisements the Company invited striking employees to return to work and advised them that the bus was available. (See, e.g., G. C. Ex. 19.)

On a single occasion during the strike, two supervisory employees visited the home of a local Union representative and "suggested that it might be helpful if there were a meeting with the local bargaining committee and the local company committee without international representatives and high-priced lawyers present" (R. 267a-268a, as corrected R. 471a). This suggestion was referred to the Union's executive board which decided not to hold the meeting; and thereafter bargaining continued with local and international Union representatives in attendance (R. 268).

## REASONS WHY CERTIORARI SHOULD BE GRANTED.

The decision of the Court below, that the Company violated Section 8(a)(5) in seeking *Union acceptance* of its proposed preamble, rests on the Court's conclusion that *per se, or as a matter of law*, the Company "was not within its rights in insisting upon its proposal" concerning the preamble (Appendix, *infra*, p. 31). Implicit in this conclusion, which is squarely opposed to the test of "good faith" enjoined by this Court in *N. L. R. B. v. American National Insurance Co.*, 343 U. S. 395, are the erroneous conclusions that the preamble proposed by the Company (i) did not relate to "terms and conditions of employment, or the negotiation of an agreement," and (ii) withheld recognition from the certified bargaining agent. Both conclusions present questions which are important to employer and union negotiators alike in the discharge of their duty to bargain collectively as required by the Act.

The decision of the Court below that the Company engaged in acts of interference in violation of Section 8(a)(1) of the Act is not supported by substantial evidence on the record considered as a whole and is in conflict with the decision of the Court of Appeals for the Seventh Circuit in *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. 2d 144, and with Section 8(c) of the Act.

## ARGUMENT.

### 1. The Preamble Counter-proposal Involved "Terms and Conditions of Employment, or the Negotiation of an Agreement."

Sections 8(a)(5), 8(b)(3) and 8(d) of the Act together require employers and unions to bargain about "wages," "hours," "terms" of employment, "conditions" of employment, and the "negotiation of an agreement." But this does not restrict collective bargaining "to those subjects which up to 1935 had been commonly bargained about in negotiations between employers and employees." *W. W. Cross & Co., Inc., v. National Labor Relations Board*, 174 F. 2d 875, 878. *Collective bargaining is "to be used irrespective of the fact that the specific differences to be adjusted had not previously been considered in the framing of collective bargains." Inland Steel Co.*, 77 N. L. R. B. 1, 9. "Effective collective bargaining has been generally conceded to include the right * * * to bargain about the exceptional as well as the routine * * *." *Order of Railroad Telegraphers v. Railway Express Agency*, 321 U. S. 343, 347.

"Common collective bargaining practice" and the "traditions of bargaining" *of a particular industry or union* must be considered in appraising the broad scope of bargainable subjects. *National Labor Relations Board v. American National Insurance Co.*, 343 U. S. 395, 407. In determining the scope of collective bargaining, the Board itself has consistently recognized the bargaining practices not only of a particular industry but even of a particular party to the negotiations. *Weyerhaeuser Timber Company*, 87 N. L. R. B. 672. The practice of both employers and unions to bargain with regard to the name by which

employers and unions respectively shall be identified in labor contracts is well established. (*Infra*, pp. 17-19.)

Administration of the labor contract[1] was at the root of the Company's proposal to emphasize the Union's local in describing the Union in the contract preamble. It is, of course, "common collective bargaining practice" (343 U. S. 395, 407) for labor contracts to deal with many "terms" or "conditions" of employment which, like the preamble, relate to administration of the contract. The "superseniority" of union stewards or officers, the furnishing and use of union bulletin boards in the plant, the terms upon which union representatives will participate in a grievance procedure, and at what step—all these and many similar ones involve "terms" or "conditions" of employment and the administration of the labor contract. (See for example, G. C. Ex. 13, *Labor Contract*, pp. 4, 5, 6; 12, 21, 24; Bureau of National Affairs, *Contract Clause Finder*, Section 60: 124-127; 62: 301-302, 361-364; 65: 241-245; 301-304.)

The Union's proposals to depart from the Board's description of the Union in the Board's certification merely followed the Union's established bargaining practice at the Pesco Division of Borg-Warner. There *the same Union and employer negotiators* had bargained in the past to the point of a strike about the description of the Union party to the labor contract, and had recognized this subject as a "term" or "condition" of employment, relevant to the administration of the contract.

Even in the negotiations involved here, the *Company* did not raise the question. The Company's proposed pre-

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[1] "* * * the extent of union and management participation in the administration of such matters is itself a condition of employment to be settled by bargaining." *NLRB v. American National Insurance Co.*, 343 U. S. 395, 409.

amble was a *counter-proposal*[1] advanced by the Company in the background of the Union's established practice to bargain concerning the description of the parties to the labor contract, and specifically directed to the subject already opened for bargaining by the Union.

In the negotiations which ensued, *both the Company and the Union* confirmed their recognition of the description of the Union party to the contract as a "term" or "condition" of employment related to the administration of the contract, by actually bargaining about the form the preamble should take. Successive proposals were made by each, until ultimately both the Company and the Union treated the question as simply one of emphasis, whether the local or international should be named first. This conceded fact makes all the more startling the conclusion of the Court below that despite the Company's admitted good faith, it nonetheless violated the Act.

In their negotiations concerning the preamble, the Company and the Union were dealing not only with a "term" or "condition" of employment but also with the "negotiation of an agreement." The "negotiation" of a labor contract, like the negotiation of any other contract, begins with the question of the form the contract should take and how the parties to it should be described.

Inclusion of the phrase "negotiation of an agreement" in Section 8(d) of the Act was intended to make clear that the parties to collective bargaining were obligated to bargain about the questions, which would inevitably arise in

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[1] "* * * the Board would permit an employer to 'propose' such a clause. But the Board would forbid bargaining for any such clause when the Union declines to accept the proposal, even where the clause is offered as a counter-proposal to a Union demand. * * *" *NLRB v. American Insurance Co.*, 343 U. S. 395, 408.

negotiations, concerning the form the contract should take and how the parties to it should be described. On familiar principles of statutory construction this phrase cannot be held to be redundant or without effect.

**2. In Seeking Union Acceptance of Its Preamble Counter-proposal, the Company Did Not Withhold or Refuse Recognition of the Union.**

Two decisive facts are undisputed: first, that at all times the Company *in fact* bargained in complete good faith; and second, that the Company "at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent." (Appendix, *infra*, p. 28). The Company thus fully discharged *the only obligations* toward the Union imposed upon the Company by the Act, that is: "To meet (the Union) at reasonable times" and to "confer (with the Union) in good faith" as the "exclusive representative" of its employees concerning "wages, hours and other terms and conditions of employment," the "negotiation of an agreement or any question arising thereunder," and "the execution of a written contract incorporating any agreement reached."

All of these things the Company did, facts which are not in dispute. *The Act requires no more.*

In advancing the Company's preamble counter-proposal, the Company merely asked—not the employees but their accredited Union representatives—for *the Union's agreement* upon a description of the Union which would emphasize the Union's local representatives who would administer the labor contract.

There was nothing extraordinary or novel about this counter-proposal, and certainly no refusal of recognition in asking the Union—the certified bargaining agent—to

agree to it. It was no different in principle, and no more involved a refusal of recognition, than bargaining about such similar and common bargaining subjects as what provision the labor contract should contain with respect to

(a) Whether or not, and the conditions upon which, Union representatives other than employees will be admitted to an employer's premises for bargaining purposes.

(b) The restrictions upon the number and class of Union representatives who may bargain for employees at various stages of the grievance process or in particular cases (e.g., a restriction to a shop steward at the first stage of the process, or a permission for Union time study or pension consultants to participate in specialized bargaining problems).

(c) The extent to which, if any, that the Union, or more usually its International, shall be amenable to suit or liable in damages as a result of Section 301 of the Labor Management Relations Act.[1]

The conclusion of the Court below that "after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who made the agreement" (Appendix, *infra*, p. 30), simply ignores the realities of collective bargaining. True, the "agent who made the agreement" is the certified bargaining repre-

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[1] "Provisions designed to limit the union's liability for violations of the no-strike pledge appear in 35 percent of contracts, * * *. *International* unions are specifically excluded from strike liability in 9 percent of contracts, * * *. Other efforts are made to avoid liability by pinning down strike responsibility. * * * Each of these types appear in 8 percent of contracts, mostly in manufacturing agreements, and are most prevalent in * * * autos & transportation equipment * * *." Bureau National Affairs, *Collective Bargaining Negotiations and Contracts*, Vol. 2, 77:3 and 77:4.

sentative. Historically, however, it has become a well recognized bargaining practice for "the agent who made the agreement" to insist that "the written contract embodying the agreement" shall be executed in a name different from the name specified in the certification.

Some unions, like the Steelworkers, insist that they be described in their contracts only by their International name. Other unions, like the Teamsters, are equally insistent that their contract description be only in their Local name. Some unions, as is true of the Union here involved, follow a varied pattern, sometimes describing themselves by their International name, sometimes by their Local name, and sometimes by both. (R. 377a, 379a, 381a, 382a-383a). There is no question but what in the field of practical contract negotiation both employers and unions recognize that the names by which the parties to the contract are identified therein do not involve a question of recognition of the right to bargain, but rather present a question involving conditions of employment and *administration of the contract.*[1]

The collective bargaining required by the Act will be strangled if it becomes a one-way street. Nothing in the Act supports the con. usion, when Union and the em-

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[1] "Some employers prefer to have the national or international union made a party to the contract together with the local union in the belief that enforceability of the agreement is thereby strengthened.

"At the same time, parent organizations sometimes insist on being made party to contracts negotiated by their locals in order to retain a proprietary interest in the contract under any conditions. However, the passage of the 1947 Labor Law has inspired some international unions to avoid becoming party to contracts lest they then become liable for court damages in the event of violations." Bureau National Affairs, *Collective Bargaining Negotiations and Contracts*, Vol. 2, 70:11.

ployer are each bargaining in good faith, that Union preferences for the name in which it shall be identified in the contract are sacrosanct and employer views are proscribed as a matter of law.

Finally, whatever may have been the Company's duty, according to the Court below, "after all issues have been agreed upon," it is clear from the Act itself that the Company's duty to bargain, acting in conceded good faith, did not "compel * * * the Company to agree to a proposal or require the making of a concession." (Section 8(d)). The Company was legally free, in good faith which is conceded here, to withhold agreement to the Union's proposed preamble.[1]

*But here the good faith bargaining of the parties produced agreement.* The only compulsion of the statute is that the parties shall "meet" and "confer" in an effort "in good faith" to reach agreement. It is a strange doctrine that would hold that when parties admittedly have met and conferred in good faith and have *reached agreement* upon a proposal concededly legal to make and legal to accept, their efforts, by some *per se* test, have, *as a matter of law*, transgressed the statute.

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[1] Cf. *NLRB v. American National Insurance Co.*, 343 U. S. 395, 407:

> "The Board's argument is a technical one for it is conceded that respondent would not be guilty of an unfair labor practice if, instead of proposing a clause that removed some matters from arbitration, it simply refused in good faith to agree to the Union proposal for unlimited arbitration."

In the case at bar, the Board majority expressly held that "the Respondent could have accepted the variance in the certification by the International, but was not required under the Act to do so. Indeed, the Respondent had the right to refuse to contract with the Local as a co-representative." (R. 481a.)

**3. The Company Did Not Interefere With, Restrain or Coerce Its Employees in Violation of Section 8(a)(1) of the Act.**

The most which could be found from the evidence is this:

(a) That in a background of illegal mass picketing the Company made a bus available for employees, who wished to do so, to enter the plant without risk of injury or molestation.

(b) That the Company invited striking employees to return to work along with the employees who had already done so, and in an advertisement referred to the Union's international representatives as "professionals."

(c) That one supervisor expressed the opinion to one Union representative that a meeting between local Union and local Company representatives might be helpful, but that the meeting never was held and bargaining continued without interruption and with both international and local Union representatives present.

"Substantial evidence on the record considered as a whole" does not support either the findings or the conclusion of the Board that the Company interfered with, restrained or coerced its employees in violation of Section 8(a)(1) of the Act. Certainly providing a bus did not coerce or threaten anyone and if it interfered with anything it was the illegal mass picketing. No striking employee was "induced" to abandon either the Union or the strike simply because he was not charged a fare for riding the bus.

Nor was there interference, restraint or coercion in connection with the advertisements to strikers or the iso-

lated suggestion of the supervisor. The Company's advertisements, fairly construed, simply advised striking employees of the terms of its offer which had been lawfully placed in effect after rejection by the Union (Cf. *NLRB v. Crompton-Highland Mills, Inc.*, 337 U. S. 217, 224-225), and urged them to return to work. The supervisor's suggestion that a meeting be held with only some of the respective negotiators participating was nothing more than a single suggestion that a less formal meeting might be helpful in resolving the many issues in dispute. It was left to the Union to accept or reject the suggestion and bargaining continued as in the past when the Union rejected the idea. (R. 266a-268a.)

Nowhere was there any threat or reprisal or promise of benefit. The Company merely expressed, as Section 8 (c) of the Act authorized it to do, its "views, argument or opinion" concerning the strike and the issues in dispute. See, e.g., *NLRB v. Bradley Washfountain Co.*, 192 F. 2d 144.

## CONCLUSION.

For the reasons stated, this Cross Petition for a Writ of Certiorari should be granted in the event this Court grants the petition of the Solicitor General in Case No. 622.

Respectfully submitted,

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## APPENDIX.

### OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Nos. 12,687, 12,730.

Decided September 12, 1956.

Before MARTIN, MILLER and STEWART, *Circuit Judges.*

MILLER, *Circuit Judge.* These cases are before the Court upon a petition by the National Labor Relations Board for enforcement of its order against the respondent Wooster Division of Borg-Warner Corporation, hereinafter called the Company, and upon a petition by International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, (UAW-CIO), hereinafter called the International or the Union, to review and set aside so much of the order as dismissed the complaint against the Company. The Company, which is an unincorporated division of Borg-Warner Corporation is engaged at Wooster, Ohio, in the manufacture and sale of fuel and hydraulic pumps. Jurisdiction of the proceedings under Section 10 (e) and (f) of the National Labor Relations Act is conceded.

Following an intensive election campaign, the Board on December 18, 1952, certified the Union as the exclusive representative of the Company's Wooster employees. On January 23, 1953, the Union presented a proposed agreement to the Company which referred to the Union as "International Union, United Automobile, Aircraft and Agricultural Implement Workers of America and its Local Union No. 1239, UAW-CIO." The Company submitted counter proposals on so-called noneconomic issues to the Union on February 9th in which it designated the employees' representative as "Local Union 1239, affiliated with the International Union, United Automobile, Aircraft

and Agricultural Implement Workers of America (UAW-CIO)." The Union's representative told the Company representatives that this provision violated the certification of the Board.

This counter proposal of the Company also provided that on issues not subject to arbitration no strike could be called unless a majority of the employees in the bargaining unit, both union and non-union, voted by secret ballot on whether to accept or reject the Company's last offer or any subsequent offer. The Union's representative stated that he would not discuss this ballot proposal because the Union would not accept it under any circumstances.

Bargaining conferences were held during February and March. The Union's proposals were substantially the same as were contained in an agreement which it had secured for employees at the Cleveland Pesco Division of Borg-Warner Corporation. The Company submitted its economic proposals on March 11th. They were not satisfactory to the Union. On March 14, the Union distributed among the employees a document showing under 21 separate headings the difference between the Company's offer and the provisions of the Pesco agreement. A strike at the plant was called if no solution of the overall issue was reached by March 20th. There were bargaining conferences on March 17, 18 and 19 without reaching an agreement. At the meeting on March 19, the Union submitted a counter proposal covering thirty issues still in dispute. The Company took the position that its last proposal should be accepted and no agreement was reached. The strike commenced on March 20.

Bargaining continued during April. The Company made a final proposal to change the name of the representative to "Local Union 1239 of United Automobile, Aircraft and Agricultural Implement Workers of America."

The Union countered with an offer to make its name read "The International, Local 1239." No agreement was reached, the Union insisting that the International be the primary party and the Company insisting that the primary party be the Local. The Company also refused to recede from its insistence upon the employee ballot proposal. On April 21, the Union asked the Company if it would withdraw its demands concerning the recognition and employee ballot provisions if the Union acceded to all the other proposals of the Company. The Company representative stated that the Company thought its proposal was fair and that it should be taken "as it is."

On April 25th, the International recommended that the employees accept the best offer they could get from the Company and return to work. On May 5th, a collective bargaining agreement retroactive to March 20th was entered into between the Local and the Company, which recognized the Local as the exclusive bargaining agent and contained the disputed employee ballot proposal.

The Union filed its initial charge on April 7, 1953. Following hearings and the Intermediate Report of the Trial Examiner, the Board, with two of its members dissenting, held that the Company did not propose its recognition and employee ballot clauses as matters which the Union could voluntarily accept or reject, but adamantly insisted upon the inclusion of these two clauses as a condition precedent to the execution of any agreement; that its liability under Section 8 (a) (5) turned not upon its good faith, but rather upon the legal question of whether the proposals were obligatory subjects of collective bargaining; that the Company was obligated to accord exclusive and unequivocal recognition to the statutory

representative and that its insistence upon making the Local not only a party to the agreement but the only party empowered to represent the employees was in complete derogation of the certificate; that the employee ballot proposal was simply an attempt to resolve economic differences at the bargaining table between an employer and the statutory agent by dealing with the employees as individuals, which was in derogation of the status of the statutory representative and violated the representation concept embodied in the Act. It held that the Company by adamantly insisting upon the inclusion of its proposed recognition and employee vote clauses as a condition to the execution of any contract refused to bargain in violation of Section 8 (a) (5) of the Act.

The Board also held that the Company had interfered with its employees in violation of Section 8 (a) (1) of the Act by soliciting them to abandon the Union and return to work, and by having advised the strikers that they would be, and were, deemed to have quit their jobs by failing to return to work by April 20th.

The Board held, however, contrary to the Trial Examiner, that the strike resulted from the parties' failure to reach agreement on the economic issues in dispute, and was not attributable to the Company's insistence on its recognition and employee ballot proposals. It was accordingly not an unfair labor practice strike entitling the strikers to reinstatement as a matter of right. It dismissed so much of the complaint as charged the Company with refusing to reinstate any employee in violation of Section 8 (a) (3) and (1) of the Act. The Union seeks a review of this ruling.

The Order, enforcement of which is now sought by the Board, directed the Company to cease and desist from (1) refusing to bargain collectively with the Union; (2)

insisting upon the recognition of a union other than the statutory representative and insisting upon employee ballot proposals, or any other proposals not involving conditions of employment; (3) soliciting or threatening with loss of employment the striking employees; and (4) in any other manner interfering with its employees in the exercise of their rights under the Act. It affirmatively directed the Company to bargain collectively with the Union with respect to rates of pay, hours, and other conditions of employment, and if an understanding was reached, embody such understanding in a signed agreement.

The Board in its ruling takes the position that the Company's liability to bargain collectively under Section 8 (a) (5) of the Act turns not upon its good faith, but rather upon the legal question of whether the proposals are obligatory subjects of collective bargaining under the statute. It recognizes that if the proposals are permissible statutory demands, the Company was privileged to adamantly insist upon bargaining as to them, provided the bargaining was conducted in good faith. *N. L. R. B. v. American National Ins. Co.*, 343 U. S. 395, 404 * * *; *N. L. R. B. v. United Clay Mines Corp.*, 219 F. (2d) 120, C. A. 6th. On the other hand, it contends that the proposals are not within the statutory subjects of bargaining, namely, "wages, hours, and other terms and conditions of employment" (Sec. 8 [d] of the Act), and that the Company's insistence upon them to the point of impasse, even though in good faith, made the action illegal per se. *N. L. R. B. v. P. Lorillard Co.*, 117 F. (2d) 921, C. A. 6th; *N. L. R. B. v. Taormina*, 207 F. (2d) 251, C. A. 5th; *N. L. R. B. v. Dalton Telephone Co.*, 187 F. (2d) 811, C. A. 5th, cert. denied, 342 U. S. 824 * * *; *N. L. R. B. v. Corsicana Cotton Mills*, 178 F. (2d) 344, C. A. 5th.

In *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, 213 F. (2d) 374, 376, C. A. 7th, the Court held that if the strike vote clause in that case was included within the statutory subjects of bargaining the employer was permitted to insist upon its position with respect thereto, provided the bargaining was conducted in good faith, but if it was not included within the statutory subjects of bargaining it could not be insisted upon by the employer to the point of creating an impasse in the negotiations. The Court, however rule, contrary to the ruling of the Board in this case, that the strike vote proposal fell within the statutory subjects of bargaining about which the employer had the right to bargain in good faith. We are in accord with that ruling, without attempting to pass upon the correctness of the Court's statement with respect to a situation where a proposed clause is not within the statutory subjects of bargaining. The bargaining area of the Act has no well defined boundaries; the phrase "conditions of employment" has not acquired a hardened and precise meaning. Management and labor are now being required to bargain collectively about issues which formerly were not considered as proper issues for inclusion in the usual collective bargaining agreement. *Inland Steel Co. v. N. L. R. B.*, 170 F. (2d) 247, 251, C. A. 7th (retirement and pension plans), *W. W. Cross & Co. v. N. L. R. B.*, 174 F. (2d) 875, C. A. 1st (group insurance program), *Richfield Oil Corp. v. N. L. R. B.*, 231 F. (2d) 717, C. A. D. C. (stock purchase plan), *N. L. R. B. v. Niles-Bement-Pond Co.*, 199 F. (2d) 713, C. A. 2nd (Christmas bonus), *N. L. R. B. v. Reed & Prince Mfg. Co.*, 205 F. (2d) 131, 136, C. A. 1st, (Check-off proposal). The area of compulsory collective bargaining is obviously an expanding one. The Board concedes that a no-strike clause is within the area. *N. L. R. B. v.*

*American National Insurance Co.*, supra, 343 U. S. at p. 408 * * *, note 22. The qualified no-strike proposal of the Company should not be classified differently. *Allis-Chalmers Mfg. Co. v. N. L. R. B.*, supra. In our opinion, the strike ballot proposal was within the area.

The Board contends that to permit an employer "to go behind the designated representatives in order to bargain with the employees themselves" would undermine the representative status of the Union contrary to the provisions of Section 9 (a) of the Act * * * which provides that the representatives selected by the majority of the employees "shall be the exclusive representatives of all the employees" in the bargaining unit. *Medo Photo Supply Corp. v. N. L. R. B.*, 321 U. S. 678, 684, 685, 687 * * *; *May Department Stores Co. v. N. L. R. B.*, 326 U. S. 376, 383-384 * * *. In *Medo Photo Supply Corp. v. N. L. R. B.*, the Court held that orderly collective bargaining requires that the employer be not permitted to go behind the designated representatives, in order to bargain with the employees themselves, even though the employees asked that the designated representatives be disregarded; that the duty of the employer to bargain collectively with the chosen representatives of his employees also involves "the negative duty to treat with no other." In that case, however, the attempt to go behind the designated representatives was without the consent of the representatives. In the present case, there was no attempt to bargain with the employees instead of the designated representatives. The Union was at all times recognized as the exclusive representative of the employees; the bargaining was done with it, not with the employees. Any requirement that the employees approve the action of the Union would be the result of an agreement with the Union to that effect. We

do not believe that the ballot proposal denied in any way the unqualified recognition of the certified bargaining agent within the meaning of the Act.

The Board urges upon us the ruling in *N. L. R. B. v. Corsicana Cotton Mills,* 178 F. (2d) 344, C. A. 5th. In that case the employer insisted that the contract contain a provision to the effect that non-union employees should have a right to attend union meetings and to vote upon the provisions of the contract negotiated by the union as bargaining agent. The Court held that such insistence withheld recognition from the Union as bargaining agent. The facts in that case go far beyond the present case. In that case the certified representative would have been unable to make *any* binding agreement with the employer, who as a practical matter would be dealing with all of the employees in agreeing upon the terms of the contract. In the present case, the non-union employees are permitted to express their views on only one phase of the contract, which was a matter of such vital importance as to justify an expression of their views.

The Company contends that the recognition proposal is also within the bargaining area, pointing out that Section 8 (d) of the Act defining the obligation to bargain collectively does not restrict it to conferring in good faith with respect to wages, hours and other terms and conditions of employment but includes "the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached. * * *" We do not think the Section is to be so broadly construed. Section 8 (a) (5), which imposes the duty of collective bargaining, is by its express terms tied in with Section 9 (a) which makes the designated representative the exclusive representative of the

employees for the purpose of collective bargaining. This status is acquired by statute and is not within the area of collective bargaining. *N. L. R. B. v. Louisville Refining Co.*, 102 F. (2d) 678, 680-681, C. A. 6th, certiorari denied, 308 U. S. 568 * * *; *N. L. R. B. v. Deena Artware*, 198 F. (2) 645, 651, C. A. 6th, certiorari denied, 345 U. S. 906 * * *. Section 8 (d) must be construed in connection with Sections 8 (a) (5) and 9 (a). When so considered, the phrase "negotiation of an agreement, or any question arising thereunder" means the terms of the agreement rather than the party with whom the agreement is being negotiated.

The Company attempts to justify its position by pointing out that it at all times recognized the Union as the exclusive bargaining agent and did all of its bargaining with it as such agent. It contends that there is nothing in the Act which requires that after all issues have been agreed upon the written contract embodying the agreement must be made with the agent who negotiated the agreement. Although there is no specific provision to that effect, we believe it is clearly implied that the designated bargaining agent is the party with whom the contract is to be made unless it voluntarily relinquishes such right in favor of another. The collective bargaining contract is not the contract of employment. It is rather the trade agreement which controls the individual contracts of employment. *J. I. Case Co. v. N. L. R. B.*, 321 U. S. 332 * * *. It is a strained construction of the Act to say that the party representing the employees and negotiating such a trade agreement for their benefit is not entitled to complete the job by having the contract which it has negotiated executed with it as the representative of the individual employees for whom it is acting. Such a contract is necessarily executed with a representative of the individual em-

ployees. We fail to see the reasoning which would authorize the substitution of the Local, not the official representative of the employees, for the Union which is the official representative of the employees, over the objections of the Union. The fact that the Union offered to share this right with its Local did not give the Company the right to insist that it relinquish the right completely. The Company was not within its rights in insisting upon its proposal pertaining to this phase of the case.

While the strike was in progress the Company solicited its employees through newspaper and radio advertising to return to work. It stressed the advantages to be derived by returning to work and the unreasonableness of the Union's demands. It offered free bus transportation for this purpose. Two Company foremen visited the Local's vice-president at his home for that purpose and suggested that an agreement might be arrived at "if the Local would forget the International." The Board ruled that such conduct violated Section 8 (a) (1) of the Act because it was an attempt to deal individually with the employees rather than with the Union and was reasonably calculated to undermine the Union. We recognize the rule urged upon us by the Company that communications with employees by an employer are protected under the First Amendment of the Constitution so long as such communications contain no threat of reprisal or promise of benefit. *N. L. R. B. v. Ford Motor Co.*, 114 F. (2) 905, 913-915, C. A. 6th, certiorari denied, 312 U. S. 689 * * *; *N. L. R. B. v. Cleveland Trust Co.*, 214 F. (2d) 95, 99, C. A. 6th. Under the rule the employer is free to say to his employees that he wishes to carry on production and, if the employees desire so to do, they may return to work. *N. L. R. B. v. Bradley Washfountain Co.*, 192 F. (2d) 144, 153, C. A. 7th. For the purposes of this opinion, it is suf-

ficient to say that in our opinion the communications complained of went beyond permissible limits. *N. L. R. B. v. Montgomery Ward & Co.*, 133 F. (2d) 676, 681, C. A. 9th * * *; *N. L. R. B. v. Clearfield Cheese Co.*, 213 F. (2d) 70, 72-83, C. A. 3rd; *N. L. R. B. v. James Thompson & Co.*, 208 F. (2d) 743, 748, C. A. 2nd; *May Department Stores Co., v. N. L. R. B.*, 326 U. S. 376, 385 * * *.

The Company also advised its striking employees by newspaper advertisement and individual letters that their jobs were still open if they returned to work, that the Company was hiring new people every day but would hold the jobs open until Monday, April 20, 1953, at which time it would start hiring replacements, and that setting a dead-line for return was a necessary move in order to know who was returning and who was not. In a letter of April 15, 1953 it was said: "If you do not return, I wish you the best of success in your new job whatever and wherever it may be." In a letter of April 22, 1953, addressed to "Those Who Chose to Give Up Their Jobs at Wooster Division" the Company's President stated: "When you did not report for work on April 20, it became apparent that you had decided to give up your job here." The Board found this to be a violation of Section 8 (a) (1) of the Act in that it was an attempt to cause the employees to abandon the strike by unlawful threats of discharge.

There is authority to the effect that notice to a striking employee that he will lose his job unless he returns to work by a certain dead-line is an illegal discharge. *N. L. R. B. v. U. S. Cold Storage Corp., supra*, 203 F. (2d) 924, 927, C. A. 5th, certiorari denied, 346 U. S. 818; *N. L. R. B. v. Beaver Meadow Creamery*, 215 F. (2d) 247, 252, C. A. 3rd; *N. L. R. B. v. Clearfield Cheese Co., supra*, 213 F. (2d) 70, 72-73, C. A. 3rd. There are other cases which hold that where striking employees are subject to

being replaced it is not an unfair labor practice to notify them that their jobs are available until a certain time at which time replacements will be sought. *Kansas Milling Co. v. N. L. R. B.*, 185 F. (2d) 413, 419-420, C. A. 10th; *N. L. R. B. v. Hart Cotton Mills*, 190 F. (2d) 964, 973, C. A. 4th; *N. L. R. B. v. Bradley Washfountain Co., supra*, 192 F. (2d) 144, 153-154, C. A. 7th; *Rubin Bros. Footwear v. N. L. R. B.*, 203 F. (2d) 486, 487, C. A. 5th. This Court has also so ruled. *Ohio Associated Tel. Co. v. N. L. R. B.*, 192 F. (2d) 664, 667-668, C. A. 6th; *Shopmen's Local Union, etc. v. N. L. R. B.*, 219 F. (2d) 874, C. A. 6th. In the present case, the newspaper advertisement stated—"We would prefer to have you return to your own job." The letter of April 15, 1953, contained the statement: "I sincerely hope you will return by Monday, April 20. You may be sure you will be most welcome." We do not consider the advertisement and letters with respect to replacements an unfair labor practice.

In dismissing so much of the complaint as sought reinstatement of 36 employees the Board found that the record failed to establish that the economic strikers were discriminated against with respect to their reinstatement, and that substantially all of the striking employees were eventually reinstated in accordance with a detailed plan worked out between the Company and the Local. This agreement, dated May 2, 1953, stated that the Company had 59 jobs available, which were not sufficient to take care of all striking employees. It divided the employees who had not returned to work into two classifications, (1) those whose jobs had not been replaced or for whom there were job openings, and (2) those whose jobs had been replaced or whose jobs had been eliminated. Under the specified procedure the available jobs were offered

to those in the first classification before being made available for those in the second classification.

This method of reinstatement and its approval by the Board was based upon the Board's ruling that the strike was an economic one rather than an unfair labor practice strike. It is settled law that where the strike is an economic one the employer can replace the striking employees with others in an effort to carry on the business and is not required to discharge those hired to fill the places of strikers upon the election of the latter to resume their employment. *N. L. R. B. v. Mackay Radio & Telegraph Co.*, 304 U. S. 333, 345-346 * * *. But he can not discharge economic strikers prior to the time their jobs are filled, or discriminate against them by reason of the strike in reinstating those whose jobs have not been filled. Sec. 2 (3) and (8) (a) (3) of the Act, Sec. 152 (3) and 158 (a) (3), Title 29, U. S. C. A. *N. L. R. B. v. U. S. Cold Storage Corp., supra,* 203 F. (2d) 924, 927, C. A. 5th; *Hamilton v. N. L. R. B.*, 160 F. (2d) 465, 468-469, C. A. 6th.

However, if the strike is caused by an unfair labor practice, the striking employees are entitled to reinstatement upon termination of the strike. *N. L. R. B. v. Deena Artware, supra,* 198 F. (2d) 645, C. A. 6th; *N. L. R. B. v. Thayer Co.*, 213 F. (2d) 748, 752, C. A. 1st, certiorari denied, 348 U. S. 883 * * *; *N. L. R. B. v. Pecheur Lozenge Co.*, 209 F. (2d) 393, 404-405, C. A. 2nd, certiorari denied, 347 U. S. 953 * * *. The Board found that the record did not establish by a preponderance of the evidence that the strike was caused by the Company's refusal to bargain rather than by a failure to reach agreement on the economic issues in dispute. This finding is vigorously challenged by the Union.

The main objective of the Union was to obtain for the Wooster Division employees the higher wages and

benefits which it had previously obtained for the Pesco Division employees. The Union's first proposal was substantially what it had obtained in its Pesco contract. The Company's economic proposals were compared with the provisions of the Pesco contract and their shortcomings emphasized. Members of the Pesco Local attended union meetings. The Pesco Local pledged its support in the event of a strike. The Union's proposal on March 19, the day before the strike, listed 30 issues as still in dispute. During the strike Union bulletins and newspaper advertisements discussed the economic issues involved without referring to the recognition clause. Inferences from proven facts may be drawn by the Board which differ from those drawn by the examiner. *N. L. R. B., v. Wiltse,* 188 F. (2) 917, 925, C. A. 6th. Giving full consideration to the trial examiner's contrary view in accordance with the ruling in *Universal Camera Corporation v. N. L. R. B.,* 340 U. S. 474, 492-497 * * * we think the evidence sustains a finding that the dispute over the economic issues was *a* cause of the strike.

The Union contends that in any event the unfair labor practice of the Company was a contributing cause of the strike which as a matter of law requires that the strike be treated as an unfair labor practice strike. That such is the legal consequence of such a factual situation appears settled. *N. L. R. B. v. Remington Rand, Inc.,* 94 F. (2d) 862, 872, C. A. 2nd, certiorari denied, 304 U. S. 576 * * *; *N. L. R. B. v. A. Sartorius & Co.,* 140 F. (2d) 203, 206, C. A. 2nd; *N. L. R. B. v. Stilley Plywood Co.,* 199 F. (2d) 319, C. A. 4th. The burden rested upon the Company to shows that the strike would have taken place even if it had not insisted upon its recognition proposal. *N. L. R. B. v. Stackpole Carbon Co.,* 105 F. (2d) 167, 176, C. A. 3rd, certiorari denied, 308 U. S. 605. * * *. We do not construe

the findings of the Board as including an express finding on this factual issue. Counsel for the Board apparently so concedes by his statement in the brief that "the Board in effect found" such to be the case. We agree with counsel for the Union that the Board's findings are inadequate with respect to this issue which is controlling on the question of reinstatement. The Union also challenges the validity of the agreement under which reinstatement was carried out. On these issues the case is remanded to the Board for further findings and rulings.

The order of the Board is modified by striking therefrom the words "and employee ballot proposals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and rulings in accordance with the Court's opinion herein.

**DECISION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.**

(Entered September 12, 1956.)

This cause came on to be heard on the transcript of the record from the National Labor Relations Board and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now ordered, adjudged, and decreed by this Court that the order of the National Labor Relations Board be and it is modified by striking therefrom the words "and employee ballot pro-

posals or any other proposals not involving conditions of employment" in paragraph 1 (b), the words "and threatening its employees with loss of employment unless they abandon the strike" in paragraph 1 (c), and the final paragraph dismissing so much of the complaint dealing with the alleged refusal of the Company to reinstate certain employees, with like modifications of the posted notice, and as so modified enforcement of the order is decreed. The case is remanded to the Board for further findings and ruling in accordance with the Court's opinion herein.